

Ore. High Court Decides Tenants Not Bound to Statutory Remedies

Harris Martin

PORTLAND, Ore. — The Oregon Supreme Court has reversed lower court decisions barring tenants' common law negligence claims over mold and other issues, ruling that the state's Residential Landlord Tenant Act does not provide the sole remedy for such disputes. *Waldner, et al. v. Stephens*, Nos. CC 03C21165, CA A127595, SC S055351 (Ore. Sup. Ct.

The court said in its Dec. 31 *en banc* opinion that in enacting the ORLTA, the legislature "did not intend to sweep into that category all actions, including common-law actions, that merely bear some nexus to the relationship between landlords and tenants under a rental agreement"

Dave Waldner and others sued landlord Stephen Stephens in Marion County (Ore.) Circuit Court, seeking damages for allegedly unhealthy conditions they blamed on Stephens negligence. Stephens lived in the adjoining duplex unit and was entirely responsible for the roof and exterior maintenance, according to the plaintiffs.

Among other defects, Waldner cited water intrusion through the roof and exterior surfaces, that led to mold contamination, property damage and various illnesses.

The plaintiffs alleged common-law negligence, as well as statutory claims under the ORLTA.

Stephens moved for dismissal of the negligence cause of action arguing that plaintiffs' claims were subsumed by the statutory claims. The landlord also moved for dismissal of the statutory claims for failure to meet the act's one-year statute of limitations.

The trial court agreed and the Court of Appeals affirmed.

Waldner appealed to the Supreme Court, arguing that the ORLTA was not the sole avenue of relief and that the relevant statute of limitations period for common-law negligence is two years, as set out in Oregon law for "injury to the person or rights of another, not arising on contract and not especially enumerated" (ORS 12.110[1]).

The Supreme Court agreed, noting that "[t]his court has stated on more than one occasion that the ORLTA does not supersede the common law of personal injury liability between a landlord and a tenant. . . ."

Stephens argued that even if the Supreme Court were to allow the negligence claim, plaintiffs would be bound the by the

ORLTA's one-year deadline for "all claims 'arising under' a rental agreement. . . ."

The high court said it is clear from the context of the act, that the legislature intended the limitations period to apply to claims that the act expressly authorized, but not to all claims between a tenant and landlord.

"The common-law negligence claim that we already have identified in plaintiffs' complaint does not rely on the ORLTA as direct authority in the sense we have described" the court explained. "Although it is true that the complaint is laced with references to the ORLTA and the rental agreement that are not relevant to that common-law claim, and which may have been susceptible to a timely motion to strike . . . , or a motion to make more definite and certain, . . . the inclusion of those allegations was not a permissible ground for dismissal of plaintiffs' negligence claims"

Robert K. Udziela of Beaverton, Ore., represents Waldner and other plaintiffs.

Thomas W. Brown and Julie A. Smith of Cosgrave Vergeer Kester in Portland, Ore., are counsel for Stephens.

Arthur C. Johnson and Douglas G. Schaller of Johnson, Clifton, Larson & Schaller in Eugene, Ore., submitted a brief on behalf of *amicus curiae* Pamela J. Pearson.

[CLICK HERE](#) for the documents.

